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September 3, 1996

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Mr. William F. Caton
Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

DOCKET FILE COPY ORIGINAL

Re: CC Docket No. 94-102

Dear Mr. Caton:

Transmitted herewith for filing with the Commission on behalf of Bell Atlantic NYNEX Mobile, Inc., are an original and eleven copies of its "Petition for Reconsideration" of the Report and Order in the above-referenced proceeding.

Should there be any questions regarding this matter, please communicate with this office.

Very truly yours,

John T. Scott, III

John T. Scott, III

Enclosures

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Before The
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**FEDERAL COMMUNICATIONS
COMMISSION
OFFICE OF SECRETARY**

In the Matter of

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Revision of the Commission's Rules to
Ensure Compatibility With Enhanced
911 Emergency Calling Systems

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)

CC Docket No. 94-102

PETITION FOR RECONSIDERATION

BELL ATLANTIC NYNEX MOBILE, INC.

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Dated: September 3, 1996

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Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Revision of the Commission's Rules to)	CC Docket No. 94-102
Ensure Compatibility With Enhanced)	
911 Emergency Calling Systems)	

PETITION FOR RECONSIDERATION

Bell Atlantic NYNEX Mobile (BANM), by its attorneys and pursuant to Section 1.429 of the Commission's Rules, hereby seeks reconsideration of the Commission's Report and Order in this proceeding,¹ to the extent it obligates providers of commercial mobile radio services (CMRS) to transmit 911 calls from non-service initialized handsets.

SUMMARY

BANM has for years provided 911 services to its subscribers, supports the development of enhanced 911 technology, and has cooperated with state and local Public Safety Answering Points (PSAPs) in implementing 911 and E911 technology to better serve the public. Enhanced 911 is evolving as it should, in

¹Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 94-102, FCC 96-264 (released July 26, 1996). Public Notice of the Report and Order occurred on August 2, 1996. 61 Fed. Reg. 40348. This petition is therefore timely under Section 1.429.

response to subscriber needs, industry standard-setting, and cooperative efforts of carriers and PSAPs.

The Report and Order nonetheless intervenes in this process to impose, by regulation, specific E911 standards. While there may be some justification in adopting a consistent, CMRS-wide obligation for carriers to provide E911 service to subscribers where PSAPs are capable of receiving E911 information, the Commission has gone too far and has exceeded the bounds of lawful agency rulemaking. Brushing aside the recommendations of two separate public safety-wireless industry joint proposals and the overwhelming weight of the record, the Commission has now obligated CMRS carriers to serve non-subscribers. New Section 20.18(b), 47 CFR § 20.18(b), states that carriers must begin sending 911 calls from all phones that transmit a "code identification," and, if a PSAP requests, 911 calls from phones that do not even transmit such an identification. This rule effectively requires carriers to serve non-subscribers.

In this regard, the Commission erred. Its decision to impose this obligation lacks the requisite record basis, ignores the serious and growing problems of wireless fraud, forces carriers to respond to inconsistent requirements imposed by different PSAPs, imposes discriminatory obligations on some wireless carriers, and contradicts its own policies limiting new regulation of the CMRS industry. Section 20.18(b) as promulgated is arbitrary, capricious and unlawful, and should be modified, as the public safety and wireless communities recommended, to apply only to 911 calls from service-initiated phones.

I. SECTION 20.18(B) LACKS THE REQUISITE BASIS IN THE RECORD.

From the outset of this proceeding, through two joint public safety-industry reports, and three separate sets of comments, the record consistently supported the application of 911 requirements to calls from service-initialized handsets, but not to non-subscribers.

-- In October 1994, representatives of public safety organizations and the wireless industry submitted a report to the Commission that urged the adoption of E911 requirements for calls from service-initialized phones.² The Report did not support extending requirements to cover phones used by non-subscribers.

-- In December 1994, the Commission's Notice of Proposed Rulemaking in this docket also proposed rules that would apply wireless E911 service rules only to calls originating from service-initialized phones.³

-- Most comments supported this approach, and pointed out the serious problems that would be created by requiring carriers to transmit calls from non-subscribers. When the Commission later sought comment on a petition from the Ad Hoc Alliance for Public Access to 911 that cellular carriers be required to transmit all calls, even from non-initiated handsets, "All of the commenters urged

²Joint Experts Meeting Report ("JEM Report"). The Report was the result of meetings among representatives of numerous wireless carriers and national organizations representing state, county and local PSAPs and emergency response services.

³Notice of Proposed Rulemaking, CC Docket No. 94-102, 9 FCC Rcd 6170 (1994).

the Commission to deny Alliance's proposals." (Report and Order at ¶ 26, emphasis added.)

-- In February 1996, a "Consensus Agreement" was filed. The Agreement was signed by the trade association representing nearly all wireless carriers and manufacturers and the leading national public safety organizations representing hundreds of state and local PSAPs and emergency service providers.⁴ The agreement accomplished what the Commission has often said it wants -- representatives of interested parties working together to adopt an agreement that will minimize disputes and promote implementation of new services to the public. Significantly, the Consensus Agreement rejected the Alliance's position, and recommended adoption of E911 rules that applied to service-initialized phones.⁵ The further record developed on the Consensus Agreement again firmly supported application of 911 services to service-initialized phones.

In the face of this record, Section 20.18(b) requires CMRS carriers to serve non-subscribers. This rule departs from the positions of most commenters and from the positions of the national organizations that represent hundreds of state, county and local agencies charged with responding to 911 calls. Because it departs from the record, Section 20.18(b) is arbitrary and unlawful.

⁴The signatories were the Cellular Telecommunications Industry Association, the Association of Public-Safety Communications Officials International, Inc., the National Emergency Number Association, and the National Association of State Nine One One Administrators.

⁵Public Safety-Wireless Industry Consensus -- Wireless Compatibility Issues, February 1996, at 5.

II. THE RULE FAILS TO ADDRESS THE PROBLEMS IT WILL CREATE.

The record is replete with information that unconditional processing of all 911 calls would encourage fraudulent and prank calls, and burden carriers and PSAPs with excessive (and untraceable) 911 use.⁶ The Commission does not address the significant problems that carriers and 911 organizations identified in increasing fraudulent use of wireless phones generally, and of fraudulent 911 use in particular, yet the Commission's action will only exacerbate these problems. In addition, the existence of a "code identification" in a handset does not mean that a PSAP can engage in call-back, one of the goals of E911 requirements. The rule as promulgated cannot therefore generate the benefits it was designed to achieve any more than would a less burdensome rule.⁷ Modification of Section 20.18(b) is

⁶E.g., Comments of AT&T Wireless Services, Inc. at 2-5; Comments of BellSouth at 10-11; Comments of Bell Atlantic NYNEX Mobile at 2-4; Comments of CTIA at 4-7; Comments of PCIA at 3-5; Comments of Rural Cellular Ass'n at 3-5. AT&T, for example, details the adverse impact of a rule requiring unrestricted 911 access on fraud prevention efforts and on PSAPs.

⁷Nor did the Commission adequately address the many technical problems created by its requirement that all 911 calls be sent to PSAPs. For example, carriers are implementing "authentication" technology to stop the growing problem of fraud. That technology does not presently allow a call from a PSAP to be routed back to a non-authenticated phone. Moreover, a subscriber may purchase a new phone and have his mobile identification number (MIN)/telephone number transferred to the new phone. The old phone (with the same MIN), however, may be used by a non-subscriber, thereby leading to the forced transmission of 911 calls. While carriers would normally block such calls, the new rule would require them to be sent to the PSAP. Yet the information sent would provide duplicative call-back information, since when the PSAP calls back the MIN, the switch will send the call to both phones, thereby defeating one of the key purposes of requiring E911 information to be transmitted. See, e.g., Comments of AT&T at 5; Comments of CTIA at 4-6.

required for this reason as well.

The Commission justifies its requirement that 911 calls from non-service initialized phones be sent to PSAPs by pointing to pay telephones, which in many states must transmit calls without charge. The Report and Order (at ¶ 37) asserts, without any supporting rationale, that "for purposes of comparing 911 service burdens of wireline and wireless carriers, we believe that a pay telephone is the closest wireline analogy to a wireless handset." This is simply wrong. Pay phones are by definition used by the public, and do not involve a subscriber-carrier relationship. They are owned and operated by carriers, not subscribers. The correct analogy is with a private landline phone. Yet the Commission has not obligated landline carriers to offer 911 service to non-subscribers. The Commission's reliance on the purported pay telephone "analogy" fails to support its action.

The Report and Order (at ¶ 32) also points to what it asserts is a problem in "delayed validation" in calls placed from areas which are not covered by existing roaming agreements, claiming that this problem warrants Section 20.18(b)'s broad requirement. The Commission, however, identifies no information in the record to support this assertion. Nothing, for example, shows that a roamer must present a credit card in order to reach a 911 service provider, yet this is one of the assumptions on which the Commission based the new rule (Id.). To the contrary, to the extent there is any record information on this issue, it shows that carriers

do transmit 911 calls without validation requirements in this situation.⁸ Again, the rule is not supported by the record and for this reason should be modified.

III. THE RULE IMPERMISSIBLY SUBJECTS CARRIERS TO VARYING STATE AND LOCAL REQUIREMENTS.

Section 20.18(b) is particularly improper because it will create a patchwork of varying E911 requirements that will burden carriers, confuse the public, and undermine the Commission's fundamental policy of consistent national regulation for CMRS. The Report and Order allows each individual PSAP to direct a CMRS carrier to send 911 calls that originate from phones that do not even have a code identification/telephone number. Each PSAP, however, is free to decide whether or not to impose this requirement on the CMRS carrier. This PSAP-by-PSAP rule fails to recognize that one wireless switch generally serves numerous PSAPs in one state. There is no obligation on PSAPs to coordinate their requests; even if all PSAPs in one state could agree, many wireless networks (particularly PCS systems) have multi-state service territories. The result will be an erratic (and changing) set of PSAPs to which carriers must transmit calls from phones without code identifications. Given that the Commission finds that many PSAPs may not even want to receive calls from non-initiated handsets, it is improper for the Commission to impose this as a requirement on wireless carriers.

⁸The Commission acknowledges this elsewhere (Report and Order at ¶ 37). See also Comments of CTIA at 7-9.

IV. THE RULE DISCRIMINATES AGAINST CMRS CARRIERS.

The Commission's action is unprecedented in that, for the first time, it requires a CMRS carrier to provide service to individuals who have not subscribed to service. The Commission fails to identify the legal basis for imposing any obligation to serve non-subscribers. Even if such a basis existed, the Commission's action here violates agency rulemaking standards because it is inconsistent with one of the Commission's stated goals -- to provide landline and wireless customers with consistent 911 service.

An agency must demonstrate how its rulemaking action achieves the goals that prompted the rulemaking. Yet here, the requirement to serve non-subscribers undermines one of the Commission's own objectives. The Notice of Proposed Rulemaking (at ¶ 37) stated the Commission's belief that rules were needed to ensure that wireless users "have the *same* level of access to 911 emergency services as is available to wireline customers." The Report and Order (at ¶ 8) notes the Commission's "concern regarding the inability of wireless *customers* to benefit from the advanced emergency capabilities of E911 systems that are available to most wireline customers." (Emphasis added.) Landline carriers, however, are not obligated to serve non-subscribers. Until a landline subscriber orders service, his or her phone is not activated. A wall jack is not active until service is initiated. The Commission's action here, as applied to the landline context, would allow anyone to plug in a phone and immediately obtain service, which is not the case. Yet the Commission has imposed the obligation to

serve non-subscribers on wireless carriers. This obligation is improper because it discriminates against wireless industry and also because it is inherently inconsistent with the Commission's own goal of equalizing landline and wireless 911 service.

The Report and Order (at ¶ 37) brushed aside commenters that warned against adopting a disparate wireless E911 rule, stating, "We are not persuaded by arguments that such a requirement would impose an unfair regulatory burden on wireless providers relative to wireline carriers." The Commission did not say why it was not persuaded, thereby failing to meet the agency's obligation when it proceeds by notice and comment rulemaking to address meaningfully the concerns of commenters. Nor did it demonstrate, as it must, why any regulation which discriminates against wireless providers is lawful under the Communications Act. This, too, warrants reconsideration.

V. THE RULE IS INCONSISTENT WITH CONGRESSIONAL AND COMMISSION POLICY.

The Commission's decision to force carriers to serve non-initialized phones is particularly unjustified in light of the 1993 and 1996 amendments to the Communications Act, which directed the Commission to adopt consistent and deregulatory policies toward telecommunications carriers generally and wireless carriers in particular. The 1993 amendments to Section 332(c) directed that the Commission adopt a deregulatory approach that emphasized market competition over government regulation. In numerous proceeding to implement Section 332(c),

the Commission has consistently stated its policy of limited regulation.⁹ The 1996 Act confirms that approach and expands it to all telecommunications carriers.¹⁰

The Commission's imposition of extensive E911 requirements on *some* CMRS carriers, and *no* landline carriers, marks a serious departure from that policy. The record shows that E911 has been rapidly developing without FCC regulation, that standards are being established by cooperation between public safety organizations and carriers, that some PSAPs do not even have the capability of using E911 technology, and that, where they do have such capability, wireless carriers are transmitting identifying information about the call. In short, the record fails to establish the requisite compelling need for imposing these requirements, particularly to the extent that they force carriers to service non-subscribers. Some carriers may decide, for competitive or other reasons, to offer broader 911 services. But there is no basis in this rulemaking record for requiring them to do so by government fiat.

⁹"We establish, as a principal objective, the goal of ensuring that unwarranted regulatory burdens are not imposed upon any mobile radio licensees that are classified as CMRS providers." Implementation of Section 3(n) and 332 of the Communications Act, Second Report and Order, 9 FCC Rcd 1411, 1418 (1994).

¹⁰The 1996 Act establishes "a pro-competitive, deregulatory national policy framework" that is intended to "promote competition and reduce regulation." S.Conf. Rep. No. 230, 104th Cong., 2d Sess. 1 (1994).

CONCLUSION

For the reasons set forth above, BANM urges the Commission to modify Section 20.18(b) of its new E911 rules to require CMRS providers to transmit 911 calls only from service-initialized handsets.

Respectfully submitted,

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